

## Message Text

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FROM ICRC USDEL

E.O. 11652: N/A

TAGS: PARM, ICRC

SUBJECT: PRELIMINARY DISCUSSION FOR NEXT SESSION DIPLOMATIC  
LOW CONFERENCE

1. REPRESENTATIVES OF U.S.; U.K.; FEDERAL REPUBLIC OF GERMANY; CANADA; AND FRANCE MET INFORMALLY ON 10, 11, AND 12 FEBRUARY IN LUGANO TO DISCUSS CERTAIN ISSUES IN ADVANCE OF THE MARCH MEETING IN LONDON OF THE WEO GROUP PREPARATORY TO THIRD SESSION OF THE DIPLOMATIC CONFERENCE WHICH CONVENES 21 APRIL. SPECIFIC SUBJECTS DISCUSSED WERE DEFINITION OF AGGRESSION/JUST WAR (NEW ARTICLE IN PROTOCOL I - CDDH/III/GT/42, 18 MARCH 1975); OIL AND OIL RESERVES (ART 49 BIS); NUCLEAR WEAPONS; ELIGIBILITY TO PW STATUS AND RELATED ISSUES (ARTICLES 35, 40, 41, 42 AND 42 BIS); REPRESSION OF BREACHES (ARTICLE 74) AND REPRISALS (ARTICLE 74 BIS).

2. DISCUSSIONS GENERALLY WERE ALONG THE FOLLOWING LINES:

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A. AGGRESSION AND NON-DISCRIMINATION. THERE WAS GENERAL AGREEMENT THAT BALANCED PREAMBULAR PROVISIONS COVERING BOTH POINTS WERE DESIRABLE AND POSSIBLE. AN APPROACH ALONG THE LINES OF THE DUTCH DRAFT, PREVIOUSLY CIRCULATED, MAY BE ACCEPTABLE. THE BELGIANS ARE ALSO WORKING ON A SIMILAR PAPER WHICH (ALDRICH HANDCARRYING COPY) WILL LIKELY BE DISCUSSED AT THE LONDON MEETING, ALONG WITH DUTCH DRAFT.

B. OIL AND OIL RESERVES. ATTITUDES WERE GENERALLY NEGATIVE. THE HUMANITARIAN ASPECTS OF ANY SPECIAL PROTECTION ARE NOT APPARENT, AND THE ENVIRONMENTAL CONSIDERATIONS COULD BE SIMILARLY ASSERTED FOR OTHER RESOURCES, INCLUDING CHEMICAL OR PHARMACEUTICAL INDUSTRIES. UK REP SAID HE WANTED TO STUDY THESE OIL PROPOSAL FURTHER, BUT WE DOUBT THAT ANY UK PROPOSAL WILL RESULT.

C. NUCLEAR WEAPONS. IT WAS THE GENERAL VIEW THAT THE PROTOCOL COULD NOT BE PERMITTED TO HAVE AN EFFECT ON THE LEGALITY OF THE USE OF NUCLEAR WEAPONS. THE FRG WAS MOST CONCERNED, SINCE TREATIES BECOME A PART OF THEIR MUNICIPAL LAW. IT WAS AGREED THAT IT MUST BE CLEAR AT THE TIME OF RATIFICATION THAT THE PROTOCOL DOES NOT AFFECT THE USE OF NUCLEAR WEAPONS, AND THAT FURTHER DISCUSSION IN CONFERENCE COMMITTEES WOULD NOT BE DESIRABLE.

D. PW STATUS. THERE WAS GENERAL ACCEPTANCE OF THE PRINCIPLE THAT ALL MEMBERS OF THE ARMED FORCES OF PARTIES TO THE CONFLICT WOULD BE ENTITLED TO PW STATUS UNLESS THEY WERE CAPTURED WHILE ENGAGING IN ESPIONAGE OR FAILED TO DISTINGUISH THEMSELVES FROM THE CIVILIAN POPULATION WHILE CARRYING OUT MILITARY OPERATIONS. PROPOSED LANGUAGE WILL BE DISTRIBUTED BY THE UK ON ARTICLE 42 AND RELATED ARTICLES IN ADVANCE OF THE LONDON MEETING.

E. REPRESSION OF BREACHES. THE US POSITION FOR THE 1975 SESSION, WITH MINOR CHANGES, WAS DISTRIBUTED AND WILL BE DISCUSSED AT THE LONDON MEETING. ADDITIONALLY, FALL-BACK PROPOSALS WERE CONSIDERED, BUT ALL EXPRESSED DOUBTS THAT ADEQUATE PROVISIONS INCORPORATING GRAVE BREACH CONCEPT LIMITED OFFICIAL USE

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IN COMBAT LAW WOULD BE NEGOTIABLE.

F. REPRISALS. A REVISED PROPOSAL INCORPORATING ASPECTS OF THE FRENCH DRAFT ARTICLE 74 BIS WAS DISCUSSED AND WILL BE FURTHER CONSIDERED AT THE LONDON MEETING.

3. THE UK INVITED COMMENTS REGARDING THE POSSIBLE

AGENDA FOR THE LONDON WEO MEETING TO BE HELD MARCH 15-17.  
TENTATIVE PLANS WERE ALSO MADE FOR A FURTHER MEETING OF  
THIS GROUP OF FIVE ON MARCH 18 IMMEDIATELY FOLLOWING THE  
WEO GROUP MEETING.FINA

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